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**JAN 25 2005**

FILE:

EAC 01 173 52894

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted, the AAO's previous decision will be affirmed and the petition will be denied.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition. The AAO affirmed the director's decision and dismissed the appeal.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
- (ii) seeks to enter the United States--
  - (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination. . . .; and
- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date. The beneficiary was outside the United States until January 10, 2001, and therefore the petitioner must document qualifying employment abroad as well as in the United States.

In dismissing the appeal, the AAO had stated:

The record contains a copy of the beneficiary's passport, issued at Ghana's embassy in Rome in September 1995. Under "Profession," the passport identifies the beneficiary as an "Auto Mechanic," despite the fact that the beneficiary was purportedly ordained as a minister on March 11, 1992. . . .

On appeal, counsel states "the Petitioner has submitted evidence that the Beneficiary was solely engaged in a religious occupation at the Italian church." The petitioner, however, had submitted only ordination certificates and a letter from the Italian church. This letter . . . neither mentioned nor denied outside employment. . . .

A *Constituzione di Associazione*, translated as "Company Establishment," identifies the beneficiary as one of eight founders of Deeper Christian Life Ministries. The document is dated August 5, 1997. The petitioner had previously submitted a letter claiming that [the beneficiary] had begun working "as a pastor in Deeper Life Bible Church . . . [in] December 1996," eight months before August 1997. The document identifies the beneficiary as a mechanic. . . . Only one founder is identified as holding a "religious" occupation.

On motion, counsel states:

Since the petition was filed on April 30, 2001, the Beneficiary had to submit documentation showing his continuous work as a pastor since on or before May 1, 1999. In support, the Petitioner submitted a letter establishing that the Beneficiary had been an assistant pastor at a church in the United States since March 2001. Included in that letter is also confirmation that the Beneficiary had been a pastor overseas with another branch of the church in Brescia, Italy, from 1996 to January 2001. This should be sufficient evidence to establish that the Beneficiary had established at least two years of continuous professional work. The fact that . . . the Beneficiary's passport listed his profession as "auto mechanic" is not dispositive, nor contradictory, evidence that the Beneficiary was employed in another profession. In the first place, that passport was issued . . . in September 1995 prior to the assumption of his duties as a pastor in Italy. Secondly, . . . he gave up that occupation when he assumed full-time duties as a pastor. Indeed, the passport also shows that the Beneficiary attended ministerial conventions in the United States on a nonimmigrant basis in 1996, 1997, 1998, and 2000. . . .

The Petitioner also submitted . . . a document of incorporation or founding which specifically confirms that the Beneficiary was one of eight original founders of the church in Italy. The fact that the founding document identifies the Beneficiary as a "mechanic" rather than a "religious officer" does not diminish the proof that the Beneficiary was employed as a pastor beginning in 1996 in Italy.

Counsel does not explain how the beneficiary was purportedly able to serve as the church's pastor in 1996, eight months before the church was established. Furthermore, as noted in the prior AAO decision, the *Constituzione di Associazione* could have referred to the beneficiary by some religious title, but instead referred to him as an "*operaio meccanico*." Counsel does not explain why this does not indicate, on its face, that the beneficiary was a lay founder of the church rather than a pastor thereof.

Counsel is correct that the passport and founding document both predate the qualifying period, and therefore they do not affirmatively demonstrate that the beneficiary was not a minister in 1999 or 2000. Still, it remains that the record contains almost no documentation from 1999 or 2000 regarding the beneficiary's religious work. As noted in the AAO's prior decision, a municipal lease and permit shows that the beneficiary's church in Italy was authorized to conduct religious services for four hours per week from October 1999 to September 2000; there is no indication of religious activity outside this four-hour period. A letter from an official of the Italian church offers no indication as to whether the beneficiary's pastoral duties occupied more than these four hours a week.

Absent persuasive contemporaneous evidence, we must rely on after-the-fact claims and on prior evidence that shows that the beneficiary was already a pastor before May 1, 1999. The documents before 1999 show that even the church considered the beneficiary to be a mechanic rather than a pastor or minister. Because the

burden of proof is on the petitioner, it cannot suffice for the petitioner merely to observe that the 1995-1997 documents do not *rule out* the beneficiary's subsequent work as a pastor. The only early documents which point toward the beneficiary's status as a pastor are ordination certificates from a Tennessee firm that issues mail-order ordination certificates in response to a ten-line questionnaire, and these certificates cannot show that the beneficiary actually *worked* as a pastor.

This leaves only after-the-fact statements to demonstrate that the beneficiary worked as a pastor during the qualifying period. Because the beneficiary was outside the United States for most of the qualifying period, a statement from a church official in the United States is not first-hand evidence of the beneficiary's past work, unless that official is able to establish how he or she came to know of the beneficiary's work overseas. If the official did not personally witness that work, or review first-hand documentation regarding that work, then the official's statements are essentially uncorroborated, second-hand claims, which carry significantly diminished weight.

The AAO, in its dismissal notice, also stated:

[T]he record shows that the beneficiary left Italy no later than January 10, 2001 and did not begin serving the petitioning church until March 2001. Thus, there was an interruption of at least seven weeks . . . during which time the beneficiary was not carrying on the vocation of a minister. . . . Thus, the beneficiary was not performing such duties continuously as required by regulation and statute.

On motion, counsel states:

[T]he evidence submitted contains a letter from the church in the United States . . . [indicating] that the Beneficiary had been employed as an assistant pastor since his arrival on January 10, 2001. . . . There was no seven-week gap between the time the Beneficiary entered the United States and the time he started working with the church. After he arrived in the United States he met with the church officials . . . and began training for his role as an assistant pastor for which he began actually performing duties in March of 2001.

The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Review of the record yields no "letter from the church" matching counsel's description. There is a letter from senior pastor Dennis M. [REDACTED] indicating "[p]rior to his ordination, [the beneficiary] went through several religious trainings," but, given other claims and documents in the record, any training "prior to his ordination" obviously does not refer to the early months of 2001. The same letter indicates that the beneficiary "has been acting as an Assistant Pastor at our Church . . . since March 2001." We can find no letter in the record that states that the beneficiary was in "training" from January to March of 2001. Even if there was such a letter, the training period would not count toward the two-year requirement if the beneficiary was not actually performing the duties ("carrying on the vocation") of a minister during that training period. An individual not performing the typical duties of clergy is not a minister for immigration purposes, even if that individual possesses a certificate of ordination. See *Matter of Rhee*, 16 I&N Dec. 607, 610 (BIA 1978).

Based on the above discussion, we find that the petitioner has not demonstrated that the AAO's decision was based on an incorrect application of law or policy, or that the decision was incorrect based on the evidence of record at the time of the initial decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

**ORDER:** The AAO's decision of July 18, 2003 is affirmed. The petition is denied.